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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 399.

JAMES C. FARGO, PRESIDENT OF THE AMERICAN EXPRESS COMPANY, APPELLANT,

vs.

EBENEZER W. POE, AUDITOR OF THE STATE OF OHIO

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JANUARY 9, 1896.

(16,133.)

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* * * * * * *

1 *Bill of Complaint.*

2 United States Circuit Court, Southern District of Ohio, Eastern Division.

JAMES C. FARGO, President of the American Express Company, Complainant,
vs.
EBENEZER W. POE, Auditor, &c., Defendant. } Bill of Complaint.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

James C. Fargo, of New York and a citizen of the State of New York, brings this bill against Ebenezer W. Poe, a citizen of the State of Ohio, residing in the eastern division of the southern district of said State; and thereupon your orator complains and says—

That he is the president and a shareholder of the American Express Company, which is a copartnership, organized many years ago in the State of New York as a joint stock association and ever since doing business as such, with its principal office and place of business in the city of New York. Said company consists of about 3,000 partners or shareholders, owning 180,000 shares, all of whom have a joint ownership and interest in the cause of action hereinafter set forth, but they are too numerous to be joined as parties hereto, and your orator, therefore, as such president and shareholder in said company, brings this suit in behalf of said association and all the shareholders thereof; that said Ebenezer W. Poe is auditor of the State of Ohio.

That on May 10, 1894, the General Assembly of said State passed an act for the taxation of express, telegraph, and telephone
3 companies doing business in said State, by which the auditor, attorney general, and treasurer of State are designated the State board of appraisers and assessors for said express, telegraph, and telephone companies, of which board the auditor of State is *ex officio* president. Said act (sec. 2778) requires express companies engaged in the business of conveying to, from, or through the State of Ohio or any part thereof money, packages, gold, silver, plate, or other articles by express, not including the ordinary lines of transportation of merchandise and property in said State, to file annually with the auditor of State between the 1st and 31st days of May a statement under oath, a form to be prescribed and prepared by the auditor, containing "a detailed statement of the real estate owned by the company in Ohio, where situate, and the value thereof as assessed for taxation, and a full and correct inventory of the personal property, including moneys and credits, owned by the company in Ohio on the 1st day of May, where situate and the value thereof," and in addition thereto the following facts:

The number of shares of the company's capital stock.

The par value and the market value, or, if there be no market value, the actual value of its shares of stock on the 1st day of May.

The total value of real estate owned by the company and situate outside of Ohio.

The total value of personal property owned by the company and situate outside of Ohio.

The entire gross receipts of the company, from whatever source derived, for the year ending the 1st day of May of business wherever done.

The gross receipts for the year ending the 1st day of May,
4 from whatever source derived, of each office within the State of Ohio and the total gross receipts of the company for such period in Ohio.

The whole length of the lines of rail and water routes over which the company did business on the 1st day of May and the length of so much of said lines of land and water transportation as is without and is within Ohio, naming lines within Ohio.

Said act provided for the assessment of express companies by said State board in the following manner, to wit:

"SECTION 2778. On the meeting of the board the auditor of State shall lay before the board the statements and schedules returned to him under sec. 2778. The said board shall proceed to ascertain and assess the value of the property of said express, telegraph and telephone companies in Ohio and in determining the value of the property of said companies in this State, to be taxed within the State and assessed as herein provided, said board shall be guided by the value of said property as determined by the value of the entire capital stock of said companies and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said companies within the State of Ohio, in the proportion which the same bears to the entire property of said companies, as determined by the value of the capital stock thereof, and the other evidence and rules as aforesaid."

That said express company is and for a great many years last past has been engaged in the express business in the United States, which business consists in carrying packages on passenger and express trains, steamboats, and stages in the care and custody of the employees of the company, who always accompany the packages. The company has no ownership of nor interest in any of the said means of conveyance in the State of Ohio, but merely pays the
5 railroad companies and the owners of steamboats and stage coaches in said State for the passage of its messengers and their accompanying packages. Aside from certain real estate owned by said company in Hamilton & Cuyahoga counties, Ohio, used by it for stabling purposes and there duly assessed for taxation, it has no property in the State of Ohio, except certain horses, wagons, harness, trucks, safes, and office fixtures, located at different points in the State, the items of principal value being horses, wagons, and trucks, which are used by the company in the collection and delivery of packages in the various towns and cities. There is

nothing peculiar about any aforesaid property; it is of the ordinary kind, whose true value in money is easily ascertained and determined by ordinary standards. Your orator insists that in ascertaining and determining the value of said property it is neither necessary nor proper, as contemplated by said act, to take into consideration either the par or market value of the company's shares or the character and amount of its property, real or personal, in other States or the amount of the gross receipts of the company from its business in Ohio or elsewhere; but that its said property should be valued in its hands as similar property is valued in the hands of all other owners; that a horse is a horse, harness is harness, a wagon is a wagon, a truck is a truck, and a safe is a safe, whether owned by express companies or by other persons or associations, and the value of such property should be ascertained and determined for purposes of taxation against express companies according to the true value of such articles as determined by their market price, which is the method adopted by the State in valuing similar property and all other property in the hands of all other persons, associations, or corporations.

6 That, nevertheless, at the request of said Poe, auditor of State, *auditor of State*, but denying his right and the right of said board to require it to make any such report or statement, said company made a statement as required by said act of May 10, 1894, upon the form prescribed by the defendant, showing the number of its capital shares and the market value thereof, so far as said market value could be shown on May 1, 1895; a detailed statement of the real estate owned by the company in Ohio, where situate, and the value thereof as assessed for taxation; a full and correct statement of the personal property, including moneys and credits, owned by the company in Ohio on the 1st day of May, where situate, and the value thereof; the total value of the real estate owned by the company and where situate outside of Ohio; the total value of its tangible personal property situate outside of Ohio; its gross receipts for the year ending May 1, 1895, from whatever source derived, within the State of Ohio, and the total gross receipts of the company for such period in Ohio; the whole length of the lines of rail and water routes over which the company did business on the first day of May, 1895, and the length of so much of said lines of land and water transportation as is without and is within Ohio, naming lines within Ohio, a copy of which report is filed herewith, marked "Exhibit A."

The true value in money of all the company's property in the State on May 1, 1895, aside from its said real estate, upon which all taxes have been paid, together with the moneys and credits of the company within the State, is given in Schedule B of said report and amounts in all to the sum of $23,430.00, and on May 1, 1895, said company had no other property in the State of Ohio or subject to the taxing jurisdiction of said State.

That said State board of appraisers and assessors received and accepted said statement, and, without objection thereto or

7 complaint thereof or calling for other information, made an

assessment, fixing the amount upon which said company is to be assessed for taxation in Ohio for the year 1895 at the sum of $499,373.60, and has reported said valuation to the auditor of State, as required by section 2780 of said act, and the auditor of State, unless restrained by this court, will, on August 15, 1895, in pursuance of said section, after deducting the value of said company's real estate in the State of Ohio as assessed for taxation, apportion and certify said total value and assessment among the several fifty-six counties in which the company does business in the proportion that the gross receipts in each county bear to the entire gross receipts of the State; and said several county auditors will, on receipt of such certification from the auditor of State, place the valuation assigned to their respective counties on the tax duplicate, to the end that taxes may be levied and collected thereon as personal property in such taxing districts, and the taxes will be a cloud and lien upon the company's property in the State.

The rate of taxation in Ohio for the year 1895 varies according to the county from two to three per cent., so that the aggregate assessment against your orator upon said illegal and excessive valuation will amount to between $10,000.00 and $15,000.00 and in one or more of the counties of the State not only the assessment, but the difference between the assessment under said valuation and the assessment upon a true and lawful valuation of said company's property, will exceed $2,000.

That the principal business of said company and of all other express companies doing business in the State of Ohio and subject to said act of May 10, 1894, is interstate commerce, to wit, the carriage of express matter between different States of the Union. More than three-fourths of the business done by it and them in the
8 State of Ohio is interstate commerce or the transportation of express matter across said State between other States and between points in said State and points in other States, although a portion of their business does consist in the transportation of express matter from one point to another in the State of Ohio.

The Adams Express Company, the United States Express Company, and the National Express Company also each filed sworn statements with the auditor of State for the year 1895, showing the following facts:

	Adams.	National.	U. S.
Number of shares	120,000		100,000
Par value of each share	$100		$100
Market value of each share	$140 to 150		$40
Taxable value of real estate owned by the company in Ohio	$25,170		$22,190
Value of personal property, including moneys and credits, owned by the company in Ohio	$42,065	$5,973	$28,438
Total value of real estate owned outside of Ohio	$3,005,157.50		
Entire gross receipts from whatever source derived within the State for the same year	$282,181.00	$19,321	
Whole length of lines of rail and water routes over which the company is doing business	29,647 miles.	4,035 miles.	
Length of such lines without the State	27,518 "	3,698 "	
Length of such lines within the State	2,129 "	337 "	3,011 miles.
Total value of tangible personal property owned outside of Ohio	$1,117,426.05		

9 And the said board made against said companies the following assessments, to wit:

The Adams Express Company	$533,095 80
The American Express Company	499,373 60
The United States Express Company	488,264 70
The National Express Company	28,981 50

Whereupon said companies, as soon as they were advised of said assessments, addressed to said board the following communication:

Hon. E. W. Poe, auditor of State and president State board of appraisers.

DEAR SIR: The assessments by your honorable board against the Western Union Telegraph Company and the express companies represented by us are so manifestly excessive, and in the case of the express companies, at least, are without any foundation that we can see to support them as assessments of property within the State of Ohio, that we are obliged to protest and apply for a correction of the assessments prior to their certification to the county auditors; and, in order that we may address your board intelligently, we should like to know upon what calculation, if any, the apparently precise amounts of the assessments, especially in the case of the express companies, are based and how the figures are arrived at. We respectfully submit that, being officers of the law, bound by law, you should furnish this information in order that the correctness of the basis of your assessments may be submitted fairly and intelligently to the test of law; otherwise we cannot help feeling that the assessments, especially in the case of the express companies, are

arbitrary and wholly without reference to the value of any property within the State, for the companies have submitted to you schedules of their property, money, and credits within the State, th- correctness of which they are prepared to establish if questioned, and the character of the property is such (horses, wagons, safes, harness, furniture, etc.) that there is not much room for difference of opinion on questions of valuation. They are unable to understand how these valuations came to be increased from ten to twenty fold.

An early answer will oblige,

Very respectfully,

RAMSEY, MAXWELL & RAMSEY,

Attorneys for the Western Union Telegraph Company, the Adams, American, United States, and National Express Companies.

Said board has made and will make no answer to said communication or correct said assessment, and your orator believes and charges that said assessment against said company was not made or intended to be made by said State board upon the basis of the value of the company's property within the State or upon any estimate of the value of its said property as property, but altogether upon other considerations, and that said sum so assessed was not arrived at by any process of valuation, calculation, or apportionment, but was an amount determined by said board arbitrarily upon the simple consideration that said company, in view of the market value of its shares, should pay in the State of Ohio a tax on the basis of said assessment wholly without reference to the value of any property owned by the company within the State. Your orator believes and charges that said assessment was fixed at an apparently precise figure by said board for the sole purpose of giving to it the semblance of an amount arrived at by process of valuation, calculation, or apportionment.

11 Your orator insists that said act of May 10, 1894, and said assessment made thereunder against said company are in contravention of the Constitution of the United States, especially of the interstate-commerce clause of section 3, article 1; section 2, article 4, and of section 1, article 14, and of the constitution of the State of Ohio, especially sections 2 and 5 of article 12, and of section 1 of article 2, because said act provides for the assessment of and the assessment embraces property not situated within the jurisdiction of the State of Ohio; and the said act provides for the assessment of property for taxation and the taxation thereof, and the said assessment so made by the State board deliberately and intentionally assesses said company's property for taxation without regard to its value and in excess of its value; and said act provides for the assessment of the property of express companies for taxation in a manner and by a method different from the manner and method provided and required by the laws of the State of Ohio in respect of the same kind of property owned by other persons within the said State and of which the same use is made under the same circum-

stances and conditions; and the said assessment is not in fact an assessment against the company in respect to its property held and owned by it in the State of Ohio, but is really and deliberately and intentionally an attempt to enforce against the company, under the guise of taking its property within the State, the payment of a tax upon its business, which is largely interstate commerce, or for the privilege of doing such business in said State by placing a fictitious and artificial value upon its property. The scheme of taxation contemplated by said law, while professing to provide for taxation of property in the State of Ohio, does not in fact do so, inas-
12 much as it directs the State board of appraisers, in determining the value of the property of express companies in said State for the purpose of taxation, to be "guided by the value of said property as determined by the value of the entire capital stock of said company * * * in the proportion which the same (viz., the property of the companies within the State) bears to the entire property of said companies, as determined by the value of the capital stock thereof," whereas the value of the capital stock or shares of said company and of express companies generally is determined, not so much by the value of the property and appliances which they use in carrying on their business as by the skill, diligence, fidelity, and success with which they conduct their business. Said company employs many thousands of men, who are constantly engaged in carrying express packages, many of them of great value, from one part of the country to another, and its income and the value of its shares are largely the result of their efforts, fidelity, and integrity, and of skillful management and supervision of the business. Said company furthermore owns bonds, stocks, and other securities aggregating millions of dollars, none of which are held or taxable in the State of Ohio, and many of them not taxable at all, all of which however, together with the business connections of the company and the reputation and good will which it has earned in the course of more than fifty years of public service, enter largely into the value of its capital shares. Nor can the value of the company's property in the State of Ohio be ascertained, even approximately, by applying or considering the proportions which its routes in Ohio bears to the total mileage of its routes, because its earnings are not uniform and in Ohio are less than its average earnings per mile of all its routes. Nor does the market price of the company's shares
13 afford any fair, reasonable, or just method of estimating the value of its property or fixing a basis of value for the purpose of taxation, because the market price is speculative and variable, depending upon financial conditions not at all connected with this company, its business or its property; and your orator insists that said scheme for taxation is unfair, illegal, unjust, and unequal, and is a regulation of and tax upon interstate commerce and a taking of its property without due process of law, which, if enforced against this company, will destroy the value of its business in Ohio and compel it to abandon the State, to its great and irreparable injury.

Said company has duly reported to the auditor of State and to

the various county auditors the amount and value of all its personal property, including moneys and credits, in the various counties of the State, as set forth in Schedule B of Exhibit "A." None of the assessments of taxes for the year 1895 have yet been made nor the rates determined, so that said company, although ready and willing, has not been able to pay or tender the taxes properly assessable against it in the various counties for the year 1895, but it is able, ready, and willing to pay the same as soon as they are assessed or the amount can be ascertained, and your orator offers to do so and offers as a condition of obtaining a preliminary or perpetual injunction under this bill to pay the approximate or estimated sum properly assessable against it into the registry of the court or otherwise to make such deposit or give some security as the court may direct.

Unless your orator can obtain the injunction prayed for in this bill against the auditor of State, said company will be obliged to bring fifty-six separate suits for injunction against the various county auditors of the State, or to defend against fifty-six separate suits for the collection of the taxes in various counties. To the end, therefore that your orator and said company may not be
14–43 subjected to the multiplicity of suits which would otherwise be necessary, and that said company may be spared irreparable injury and its property not subjected to an illegal cloud and lien, your orator prays for a writ of subpœna against said Ebenezer W. Poe to appear and make full and true answer to this bill, but not under oath, and especially to show how and upon what calculation, if any, the amount of the assessment was arrived at, and upon the final hearing of the cause that he may be perpetually enjoined from apportioning or certifying the said assessment made by said State board against said company to the auditors of any of the counties of the State, and that he and they may be enjoined from taking any steps thereunder; that in the meantime a restraining order and an injunction may be issued pending the suit to the same effect, and that upon the final hearing said assessment may be declared null and void and cancelled, and that your orator may have all other relief to which he may be entitled in equity.

RAMSEY, MAXWELL & RAMSEY, *Solicitors.*

STATE OF OHIO, }
Hamilton County, } *ss:*

J. H. A. Romer, being duly sworn, says that he is agent of said The American Express Company; that he has read the foregoing bill of complaint; that said bill and allegation thereof are true of his own knowledge except as to matters therein stated to be alleged upon opinion and belief, and as to those matters he believes same to be true.

J. H. A. ROMER.

Sworn to before me and *pre*scribed in my presence this 13th day of August, A. D. 1895.

[SEAL.]

WM. W. RAMSEY,
Notary Public.

* * * * * * *

44 And afterwards, to wit, on the 4th day of December, A. D. 1895, the following Exhibit "A" to the bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

"EXHIBIT A" TO THE BILL.

45 1895.

Annual statement of the property of the American Express Company subject to taxation in the State of Ohio, as required by sections 2777, 2778, 2778*a*, 2779, 2780 of the Revised Statutes, as amended and supplemented by an act passed May 10, 1894, as existing on the 1st day of May, 1895.

AUDITOR OF STATE'S OFFICE, COLUMBUS, OHIO.

To express companies:

This form is submitted for the purpose of procuring property statements from each express company doing business in Ohio. All statements furnished must be made on this blank, and the items called for therein must be given in full. This report must be made out and sworn to by the president, secretary, treasurer, superintendent, or chief officer of such company and filed in the auditor of State's department on or before May 10th of each year.

Respectfully, E. W. POE,
Auditor of State.

Nature of company, whether person or persons, association or corporation: Joint stock association.

Under the laws of what State organized: New York.

Location of principal office: No. 65 Broadway, New York.

Give the name and post-office address of each of the following officers:

President, James C. Fargo, New York, N. Y.
46 Secretary, W. H. Seward, New York, N. Y.
Auditor, W. E. Powelson, New York, N. Y.
Treasurer, Chas. G. Clark, New York, N. Y.
General sup't, Rob't D. Hughes, Cleveland, O.
Chief officer or managing agent in Ohio, Rob't D. Hughes, Cleveland, O.

Number of interests	$180,000 00
Par value of interest	100 00
Market value (if there be no market value give the actual value)	112 00
Taxable value of real estate owned by the company in Ohio	58,660 00
Value of personal property, including moneys and credits, owned by the company in Ohio	23,430 00
Total value of real estate owned outside of Ohio	4,891,259 00
Total value of personal property owned outside of Ohio	1,661,759 00

Entire gross receipts from whatever source derived within the State	Unable to give.
Entire gross receipts from whatever source derived within the State	275,446 00
Whole length of lines of rail and water routes over which the company is doing business, about	35,295 miles.
Length of such lines without the State, about	33,564 miles.
Length of such lines within the State, about	1,731 miles.

47 SCHEDULE A.—*Detailed Statement of the Value of the Real Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.*

Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real estate and buildings as assessed for taxation.	Total value — county.
		Dollars.	*Dollars.*
Cuyahoga	Cleveland	42,570	42,570
Hamilton	Cincinnati	16,090	16,090

48 SCHEDULE B.—*Detailed Statement of the Value of Personal Property, Including Moneys and Credits, in Each Township, City, Village, and Special School District, with Total for Each County.*

Names of counties.	Names of townships, cities, villages, and special school districts.	Value of personal property, moneys, and credits.	Total value in county.
		Dollars.	*Dollars.*
Ashtabula	Ashtabula	300	
	Conneaut	75	
			375 00
Allen	Lima	220	220 00
Butler	Middletown	140	140 00
Clarke	Springfield	575	575 00
Crawford	Crestline	60	
	Galion	90	
			150 00
Champaign	Urbana	130	130 00
Cuyahoga	Cleveland	5,650	
Gen'l sup't's ofc.	Cleveland	200	
			5,850 00

Schedule B—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Value of personal property, moneys, and credits.	Total value in county.
		Dollars.	*Dollars.*
Delaware	Delaware.....	230	230 00
Darke	Greenville.....	60	
....	Versailles	25	
			85 00
Erie	Sandusky	655	655 00
Franklin...	Columbus	1,355	1,355 00
Hamilton	Cincinnati.....	4,555	
Sup't's office.....	Cincinnati.....	150	
			4,705 00
Hancock	Findlay	330	330 00
Huron.....	Norwalk	165	165 00
Hardin	Kenton	185	185 00
Lake	Mentor....	25	
.....	Painesville	265	
			290 00
Lorain.....	Wellington	50	50 00
Lucas	Toledo	2,255	2,255 00
Logan	Bellefontaine	290	290 00
Madison	London	25	25 00
Marion	Marion.....	350	350 00
Montgomery	Dayton	1,495	1,495 00
Morrow	Cardington	25	25 00
Miami	Piqua	175	
.....	Troy.....	85	
			260 00
Richland	Shelby.....	70	70 00
Seneca.....	Fostoria.....	315	315 00
Shelby	Sidney	105	105 00
Summit	Akron	470	470 00
Stark.....	Canton..... ..	660	660 00
Tuscarawas	Canal Dover.....	80	80 00
Van Wert.....	Van Wert	80	80 00
Wyandotte.....	Carey....	30	
.....	Upp. Sandusky ...	30	
			60 00
Warren	Franklin	200	200 00
Washington	Marietta	175	175 00
Ohio&Western Pa.	Division. In transit	1,045	1,045 00
Total	....	....	23,430 00

49 SCHEDULE D.—*Return of Gross Receipts as Contemplated by Section 2778 of Revised Statutes of Ohio as Amended May 10, 1894.*

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated—column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
Ashtabula	Ashtabula	2,096	
	Andover	343	
	Conneaut	905	
	Dorset	64	
	Geneva	994	
	Jefferson	447	
	Kingsville	94	
	Leon	40	
	Simon	12	
	Mt. Williamsfield	107	
			5,102
Allen	Lima	1,597	1,597
Auglaize	St. John's	50	
	Aniapolis	58	
			108
Butler	Hughes	658	
	Kyle's	8	
	Maud's	173	
	Middletown	980	
	Monroe	73	
	W't Chester	17	
			1,909
Clarke	Bowlusville	14	
	Catawba	43	
	Cold Springs	6	
	Enon	94	
	New Moorfield	38	
	New Carlisle	459	
	Forgy		
	Plattsburg	47	
	Springfield	8,983	
	Tremont	40	
			9,724
Crawford	Crestline	454	
	Galion	1,662	
			2,116
Champaign	Mechanicsburg	624	
	Rosewood	36	
	St. Paris	137	
	Urbana	2,042	
			2,839

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated—column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
Coshocton.....	Avondale.....	380	
.....	Chili.....	126	
.....	Covington	834	
			1,340
Cuyahoga	Berea	305	
.....	Bedford	188	
.....	Brecksville	61	
.....	Brooklyn.....	10	
.....	Cleveland	66,005	
Carried forward		66,569	
50 Bro't forward		66,569	
Cuyahoga	Collinwood	153	
.....	Chagin Falls.....	436	
.....	Falls Jct.....	11	
.....	Glenville	47	
.....	Miles Ave.....	10	
.....	Newburg	122	
.....	Nottingham	91	
... ...	Salon	19	
.....	So. Park.....	52	
.....	Ws. View	63	
			67,553
Carroll	Carrollton	892	
.....	Dell Roy.	220	
.....	Oneida.....	97	
.....	Sherodsville	192	
			1,401
Defiance	Ney	24	
.....	Sherwood	93	
			117
Delaware	Ashley	518	
.....	Berlin.....	36	
.....	Delaware.....	2,768	
.....	Eden	196	
.....	Lewis Ctr..	79	
.....	Ostrander	222	
.....	Powell	55	
.....	Radnor	25	
.....	White Sulphur....	13	
			3,912

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated—column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
Darke	Arcanum	78	
	Ansonia	124	
	Burkettsville	17	
	Castine	65	
	Dawn	13	
	Glenkarn	61	
	Greenville	591	
	New Weston	56	
	Rossville	60	
	Savona	14	
	Versailles	151	
			1,230
Erie	Bogart	18	
	Castalia	373	
	Milan	143	
	Sandusky	7,134	
			7,668
51			
Franklin	Columbus	18,403	
	Elmwood	68	
	Flint	8	
	Galloway	32	
	Georgeville	71	
	Worthington	31	
			18,613
Greene	Osborne	184	184
Guernsey	Byesville	169	
	Cambridge	857	
	Kimbolton	277	
	Oldham	37	
	Pt. Pleasant	155	
			1,495
Hamilton	Addyston	45	
	Brecon	342	
	Blue Ash	121	
	Cincinnati	53,019	
	Carthage	98	
	Cleves	27	
	Delhi	19	
	Elizabethtown	20	
	Elmwood	147	

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated — column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
.... ..	Fern Bank...	18	
.....	Hartwell.....	39	
.....	Hopkins Ave.....	34	
.....	Hazelwood.... ...	5	
.....	Harrison	478	
.....	Kennedy	18	
.....	Lockwood.....	307	
.....	No. Bend.....	23	
.... ..	Sharon.....	66	
.....	Silverton.....	5	
.... ..	Valley Jct.....	6	
			54,847
Hancock.....	Benton.....	21	
.....	Findlay..... ...	1,559	
.....	Vanlue.....	53	
			1,663
Huron.....	Greenwich...	927	
.....	New London... ..	1,811	
.....	Norwalk.....	437	
			3,175
Hardin	Big Springs.... ..	179	
.....	Forest.....	353	
.....	Kenton.....	1,311	
.....	Ws. Victory.....	268	
.....	Ridgeway	377	
			2,488
52			
Jackson.....	Jackson Ctr.....	114	
			114
Lake	Mentor..... ..	428	
.....	Madison..... ..	730	
.....	Perry.....	349	
.....	Painesville	2,565	
.....	Unionville.... ...	293	
... .	Wickliffe	143	
.....	Willoughby.....	674	
.....	Noble.....	36	
			5,218
Lorain.....	Columbia.....	54	
.....	Grafton	223	
.....	La Grange.....	183	

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated — column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
.....	No. Eaton	82	
.....	Rochester.....	400	
.. ..	Wellington	1,715	
			2,657
Lucas	Toledo	7,704	
			7,704
Logan	Belle Ctr	485	
.....	Bellefontaine.....	1,839	
.....	De Graff.....	576	
.....	Harper.....	18	
.....	Huntsville.....	379	
.....	Quincy.....	202	
....	Richland.....	42	
.....	Rushsylvania	237	
.....	Ws. Liberty.....	405	
			4,183
Madison	Lilly Chapel	130	
.....	London	525	
			655
Marion	Agosta	119	
.. ..	Caledonia	155	
.....	Larue.....	484	
.....	Marion..... ..	2,865	
.....	Martel.....	139	
.....	Morral	35	
....	Owen.....	9	
.....	Prospect.....	338	
			4,144
Muskingum	Dresden	335	
.....	Ellis.....	6	
.....	Zanesville	1,414	
			1,755
Montgomery	Dayton.....	9,825	
...	Famersville.....	75	
....	Germantown.....	318	
....	Miamisburg.....	641	
....	Nat'l Mil't'y Home.	223	
....	W. Carrollton.....	120	
			11,202
53			
Mahoning... ...	Lowellville	44	

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated — column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
.....	Struthers.....	27	
.....	Youngstown	809	
			880
Morrow	Cardington.....	1,123	
.....	Edison.....	420	
.....	Mt. Gilead... .. .	823	
.....	St. James.....	327	
			2,693
Miami	Bronns.....	10	
....	Laura....	47	
....	Ludlow Falls	23	
.....	Piqua.....	714	
.....	Troy....	581	
			1,375
Mercer...	Celina.....	571	
....	Cold Water	162	
....	Rockford.....	315	
....	St. Henry	397	
			1,445
Noble	Ava	146	
... .	Belle Valley.....	18	
... .	Caldwell.....	546	
....	Dexter City.....	244	
.....	Dudley.....	484	
.....	So. Olive.....	611	
			2,049
Preble.....	Ingomar	23	
.....	Lewisburg...	144	
.....	Ws. Manchester....	220	
.....	Ws. Alexandria....	253	
			640
Paulding.....	Patson.....	1	
.....	Cecil	77	
.....	Haviland.....	33	
.....	Latty	47	
.....	Paulding	550	
.....	Tipton.....		
			708
Portage.....	Binnfield	88	
.....	Kent.....	602	
.....	Mishler	306	

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated — column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
.....	Streetsboro	49	
.....	Suffield	41	
			1,086
Putnam.....	Avis.....	12	
.....	Croswell.....	20	
.....	Cloverdale.....	20	
.....	Gilboa	76	
.....	Groverhill.... ...	110	
.....	Glandorf	43	
.....	Ottawa.....	242	
			523
54			
Richland.....	Shelby.....	1,130	
.....	Shiloh	545	
.....	Vernor.....	52	
			1,727
Sandusky	Clyde.	1,055	
			1,055
Seneca.....	Adrian.....	35	
.....	Alvada.....	340	
.....	Berwick.....	27	
.....	Fostoria	1,131	
.....	Green Spring	312	
....	Tiffin....	1,598	
			3,443
Shelby.....	Houston	22	
.....	Maplewood	18	
.....	Pemberton	23	
... .	Sidney.....	1,393	
			1,456
Summit.....	Akron	3,256	
.....	Boston.....	44	
.....	Botzum	24	
... .	East Akron.....	155	
.....	Everett.....	33	
.....	Hawkins.....	77	
.....	Krumroy.....	19	
....	Mogadore	89	
.....	Peninsula	412	
.....	Twinsburg.....	91	
.....	Uniontown	145	
			4,345

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated—column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
Stark	Beach City	405	
	Canton	4,874	
	Greentown	464	
	Hartville	163	
	Justus	98	
	Middle Branch	72	
	Minerva	360	
	Massillon	270	
	No. Industry	38	
	New Berlin	364	
	Navarre	117	
	Osnaburg	99	
	Robertsville	47	
	Sparta	73	
			7,444
Trumbull	Coalburg	11	
	Fowler	103	
	Hubbard	17	
	Kinsman	342	
	Tyrrell Hill	19	
			492
55			
Tuscarawas	Baltic	1,011	
	Barr's Mills	116	
	Canal Dover	350	
	Dundee	248	
	Mineral Point	263	
	New Comerstown	352	
	Phillipsburg	254	
	Sandyville	28	
	Sugar Creek	726	
	Valley Jct	89	
	Wolf's St	10	
			3,447
Union	Dover	38	
	Irwin	49	
	Marysville	656	
	Milford Ctr	218	
			961

Schedule D—Continued.

Names of counties.	Names of townships, cities, villages, and special school districts.	Amount of gross receipts in each taxing district as designated—column 2.	Total gross receipts in county.
		Dollars.	*Dollars.*
Van Wert	Ohio City	101	
	Scott	81	
	Van Wert	1,390	
			1,572
Wyandot	Carey	613	
	Crawford	13	
	Harpster	47	
	Upp. Sandusky	870	
	Wharton	54	
			1,597
Warren	Franklin	663	
	Lebanon	548	
	Mason	108	
			1,319
Wood	Bradner	447	
	Le Moyne	51	
	Longley	2	
	Pemberville	150	
	Rising Sun	256	
	Walbridge	5	
			911
Washington	Elba	42	
	Marietta	6,236	
	Macksburg	115	
	Stanleyville	43	
	Warner	201	
	Whipple	172	
			6,809
Williams	Alvordton	35	
	Bryan	559	
	Ws. Unity	192	
			786
Total			275,446

56 SCHEDULE E.—*Showing the Name and Length of Lines of Rail and Water Transportation over which the Company is Doing Business in Ohio.*

Names of lines.	Length of lines.
Canton Massillon Elec	8
Cincinnati, Jackson & Mackinaw	165
Cincinnati, Lebanon & Northern	3
Cleveland & Marietta	105
Cleveland, Canton and Southern	198
Cleveland, Cincinnati, Chicago and St. Louis	608
Columbus, Hocking Valley and Toledo	123
Dayton and Union	47
Findley, Ft. Wayne and N. Western	60
Home Ave	4
Lake Shore and Michigan Southern	70
Lake Shore and Michigan Southern (Franklin div.)	74
Miami Valley	8
Ohio Southern	66
Peoria & Eastern	62
Pittsburgh and Lake Erie	10
Sandusky, Milan and Northern	18
Valley	75
	1,731

57 Aside from the real estate mentioned in the accompanying schedule situated in Hamilton & Cuyahoga and there duly assessed for taxation, the American Express Co. has no property in the State of Ohio except certain horses, wagons, harness, trucks, safes, and office fixtures located at different points. The actual value of this property in money, together with the moneys and credits of the company within the State, is given in Schedule "B," hereto attached, together with the location of the various items.

The business of the company in the State consists in carrying packages on passenger and express trains, steamboats, and stages, in the care and custody of its employees who carry the packages. The express company has no ownership of or interest in these means of conveyance; it simply pays to the railroad companies and the owners of steamboats and stage coaches for the passage of its messengers and their accompanying packages. The horses, wagons, and trucks are used by it in the collection and delivery of these packages. There is nothing peculiar about its property; it is of the ordinary kind whose true value in money must be measured by the ordinary standards and is easily ascertained and determined.

The company respectfully insists that in ascertaining and determining the value of said property it is neither necessary nor proper to take into consideration either the par or market value of its shares nor the character and amount of its property, real or per-

sonal, in other States, nor the amount of gross or net receipts of the company from its business in Ohio or elsewhere.

The company insists that property of this kind, which is the only personal property owned or held by it in the State of Ohio, should be valued in its hands as all similar property is valued in the hands of other owners.

58–72 The company owns considerable real estate outside of the State of Ohio that is used in the conduct of the company's business.

The law under which this report is made being in contravention to the Constitution of the United States and of the State of Ohio, same is respectfully made under protest.

THE STATE OF OHIO, }
County of Cuyahoga, } *ss:*

On the 28th day of May, 1895, personally appeared before me, the undersigned, a notary public in and for said Cuyahoga county, R. D. Hughes, who, being duly sworn, says that he is the gen'l sup't of the American Express Company, and that the foregoing statement is correctly taken from the books of said company and is true to the best of his knowledge and belief.

R. D. HUGHES.

Subscribed and sworn to before me the day and year above written.

EVAN H. HOPKINS,
Notary Public.

[NOTARIAL SEAL.]

* * * * * * *

73 And afterwards, to wit, on the 5th day of December, A. D. 1895, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal C, page 90.

Demurrer to Bill Sustained, Injunction Dissolved, &c.

This cause came on to be heard upon the bill and the exhibit and the demurrer of the defendant to the bill, it being stipulated by counsel that the transcript of the proceedings of the State board of appraisers & assessors, and also the correspondence between the parties as disclosed in the copies thereof on file, shall be treated as part of the record the same as if made exhibits to the bill. On consideration whereof the court sustains the demurrer, dissolves the preliminary injunction heretofore granted, and dismisses the bill at the costs of the plaintiff. Thereupon the plaintiff presents his petition for appeal to the Supreme Court of the United States, and his assignment of errors, and the appeal is allowed in open court and the appeal bond fixed at $5,000.00, and upon application of the

plaintiff it is ordered that the order dissolving the injunction
74 be, and the same is hereby, suspended pending the appeal, until or unless otherwise ordered by the Supreme Court.

Nothing in this order shall relieve the plaintiff's company from payment of taxes for the year 1895 on its personal property, moneys, and credits in the various counties, in accordance with its return thereof to the State board, and the order suspending the dissolution of the injunction is upon condition that it shall pay said taxes for the year 1895 accordingly or tender payment thereof to the various county treasurers at the time when the taxes for 1895 are due.

And afterwards, to wit, on the same day as aforesaid, the following petition for appeal and assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Petition for Appeal and Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Eastern Division.

JAMES C. FARGO, President of American Express Company,
vs.
EBENEZER W. POE, Auditor, &c. } # 739.

Petition for appeal and assignment of errors.

The plaintiff prays an appeal from the decree dismissing the bill to the Supreme Court of the United States and assigns for error that the court erred in sustaining the demurrer to the bill in dissolving the preliminary injunction and in dismissing the bill.

75–79 The plaintiff especially insists that the assessment complained of is not in fact an assessment against his company in respect of its property held or owned by it in the State of Ohio or within the taxing jurisdiction of the State, but is really an attempt, under the guise of taxing its property within the State, to enforce against it the payment of a tax upon its business, which is largely interstate commerce, or for the privilege of doing such business in the State by placing a fictitious or artificial value upon its property, and that said assessment and the statute of Ohio purporting to authorize the same are therefore in contravention of the Constitution of the United States, especially of the interstate-commerce clause of section 8, article 1, and of section 2, article 4, and of section 1, article 14.

The plaintiff prays for an order continuing the temporary injunction pending the appeal to the Supreme Court.

LAWRENCE MAXWELL, JR., *Counsel.*

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